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Attorneys for Defendants  
INSTITUTIONAL TRADING CORPORATION (erroneously  
sued as "Institutional Trading Company" and IT.COM

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KWONG YUNG,

Plaintiff,

v.

INSTITUTIONAL TRADING COMPANY, a  
corporation, IT.COM, a corporation, DOES 1  
to 10,,

Defendants.

Case No. 07-CV-5949

**DEFENDANTS' OBJECTIONS TO  
EVIDENCE SUBMITTED BY  
PLAINTIFF IN OPPOSITION TO  
DEFENDANTS' MOTION TO  
DISMISS FOR LACK OF PERSONAL  
JURISDICTION**

Date: February 22, 2008  
Time: 10:00 a.m.  
Courtroom: 1, 17th Floor  
Judge: Honorable Samuel Conti

1 **I. INTRODUCTION**

2 Pursuant to Federal Rule of Civil Procedure 56(3), Federal Rules of Evidence 101-106,  
 3 Civil Local Rule 7-5 and the Northern District of California's General Order 45 X.B, Defendants  
 4 Institutional Trading Corporation ("ITC") and IT.com (collectively "Defendants") hereby object  
 5 to the evidence submitted by Plaintiff Kwong Yung ("Plaintiff") in opposition to Defendants'  
 6 Motion to Dismiss for lack of personal jurisdiction. Plaintiff's evidence consists solely of his  
 7 declaration, a declaration that is unsigned, riddled with defects that violate the most basic  
 8 evidentiary principles and chock-full of perjury. For example, Plaintiff makes broad statements  
 9 about Defendants' business practices without establishing any personal knowledge to support  
 10 them, and makes repeated statements of legal conclusions. For these reasons, and as set forth  
 11 more fully below in the general and specific objections, Plaintiff's supporting declaration should  
 12 be disregarded by the Court. *See FDIC v. New Hampshire Ins. Co.*, 953 F.2d 478, 484-85 (9th  
 13 Cir. 1991) (statements in declarations or other evidence which are not admissible may be stricken  
 14 by the court).

15 Plaintiff also many of plaintiff's sworn statements are flatly contradicted by irrefutable  
 16 evidence. For example, he says that he paid California income taxes based on his work with  
 17 Defendants in California in 2005 and 2006, yet his 2006 W-2 says he paid income taxes in  
 18 Virginia and he completed a W-4 in December 2005 indicating that his address was in Virginia.  
 19 Although Defendants understand that, for purposes of this motion, conflicts between parties over  
 20 statements contained in affidavits must be resolved in the Plaintiff's favor, this Court does not  
 21 have to accept Plaintiff's statements that are contradicted by documentary evidence or turn a  
 22 blind eye to Plaintiff's demonstrably untrue and perjurious declaration.

23 **II. GENERAL OBJECTIONS TO EVIDENCE**

24 **A. Plaintiff's Supporting Declaration Must Be Disregarded Because It Was Not**  
 25 **Signed And Filed In Accordance With General Order 45 X.B.**

26 The Court should strike Plaintiff's declaration in its entirety because it was electronically  
 27 filed without a signature. Pursuant to General Order 45 X.B., a signature attestation is required  
 28 for any signatures which are not imaged. The signature on Plaintiff's declaration was a

1 conformed signature (*i.e.* /s/) and he has not filed a signature attestation stating that he is in  
 2 possession of the original signature, rendering the declaration unsigned. *See* 28 U.S.C. § 1746  
 3 (requiring a signature on a declaration). An unsigned affidavit or declaration cannot be used to  
 4 support a motion such as a motion to dismiss for lack of personal jurisdiction. *See id.*; *see also*  
 5 *Barlow v. Connecticut*, 319 F. Supp. 2d 250, 259 (D. Conn. 2004) (unsigned statements not in  
 6 conformity with Fed. R. Civ. Pro. 56(e) are not sufficient to defeat a motion for summary  
 7 judgment); Local Civil Rule 7-5 (declarations in support of any motion to conform to Fed. R. Civ.  
 8 P. 56(e)).

9 Accordingly, the Court should disregard Plaintiff's Declaration in its entirety.

10 **B. Statements In Plaintiff's Supporting Declaration Must Be Disregarded**  
 11 **Because They Lack Foundation**

12 It is axiomatic that declarations must set forth facts within the personal knowledge of the  
 13 declarant. Fed. R. Evid. 602 (stating that a witness may not testify to a matter unless she has  
 14 personal knowledge of the matter). *See also* Fed. R. Civ. P. 56(e) (requiring that affiants have  
 15 personal knowledge). Accordingly, testimony must be excluded unless the witness actually  
 16 perceived or observed that to which he testifies. *Latman v. Burdette*, 366 F.3d 744, 787 (9th Cir.  
 17 2004); *see also* 3 Jack B. Weinstein & Margaret A. Berger, Weinstein's Federal Evidence, §  
 18 602.02 (2d ed. 2004) ("A witness may testify only about matters on which he or she has first-hand  
 19 knowledge. The witness's testimony must be based on events perceived by the witness through  
 20 one of the five senses.").

21 As noted in more detail in Defendants' Specific Objections, Plaintiff's declaration is filled  
 22 with statements that are grounded in speculation and not personal knowledge. For example,  
 23 Plaintiff states that "Defendant companies have a payroll consisting of other employees who are  
 24 physically located in the Northern District of California." Yung Dec. ¶ 13. This is flatly untrue.  
 25 In any event, while Plaintiff alleges to have been "chief scientist" employed by Defendants, he  
 26 does not establish a foundation for how this position provided him with factual information  
 27 regarding who was on Defendants' payroll and where those people lived and worked. Plaintiff's  
 28 attempt to swear under oath about matters outside of his personal knowledge violates the most

1 fundamental rules of evidence. *See* Fed. R. Evid. 602. Plaintiff has not established that he has  
 2 personal knowledge of some of the “facts” referred to in his declaration and therefore cannot  
 3 establish a sufficient foundation for these so-called facts. His failure to establish a foundation for  
 4 this and other statements cited in Defendants’ Specific Objections renders his testimony  
 5 inadmissible.

6 **C. The Vague, Conclusory, And Overbroad Statements of Plaintiff’s Supporting**  
 7 **Declaration Should Not Be Considered By The Court**

8 The Court should also disregard Plaintiff’s declaration because it contains a number  
 9 inadmissible statements and unreliable conclusions of ultimate facts. Plaintiff’s “affidavits and  
 10 exhibits submitted in support of the Response to the [motion to dismiss] must comply with the  
 11 Rules of Evidence.” *Travelers Cas. & Sur. Co. v. Telstar Constr. Co.*, 252 F. Supp. 2d 917, 923  
 12 (D. Ariz. 2003); *Hancock v. Hitt*, 1998 U.S. Dist. LEXIS 10058, at \*2 (N.D. Cal. June 9, 1998)  
 13 (“plaintiff must produce admissible evidence to support the court’s exercise of personal  
 14 jurisdiction”). Vague, conclusory and speculative testimony is improper and should not be  
 15 considered by the Court. *National Steel Corp. v. Golden Eagles Ins. Corp.*, 121 F.3d 496, 502  
 16 (9th Cir. 1997). Accordingly, declarations containing conclusory, overbroad statements which  
 17 are not grounded in factual matter must be excluded. *See Far Out Prods.. v. Oskar*, 247 F.3d 986,  
 18 997 (9th Cir. 2001) (holding that trial court properly disregarded declarations that failed to  
 19 present any specific facts); *United States v. Nissan Van 1987*, 1994 U.S. App. LEXIS 37052, \*8  
 20 (9th Cir. 1994) (holding that trial court properly disregarded declaration that set forth conclusory  
 21 allegations without factual support).

22 Here, Plaintiff makes a number of overbroad, vague, and conclusory allegations, such as  
 23 “Defendant was doing business in the Northern District of California” (Yung Dec., ¶4); he  
 24 traveled to San Francisco “for business” (*Id.* ¶ 5); he “engaged business affiliates” in California  
 25 for Defendants (*Id.*); he was in charge of establishing “business relationships” with California  
 26 companies (*Id.*); Defendants “do business” with companies in California (*Id.* ¶ 4.); and he  
 27 “pursued business” with California companies (*Id.* ¶ 10). However, Plaintiff’s declaration  
 28 provides no facts setting forth what “doing business” or “business affiliates” mean, or specifically

1 what actions of Defendants in California constitute “doing business.” The Court should  
 2 accordingly deem such statements to be overbroad, vague and conclusory and refuse to admit  
 3 them.

4 **D. Plaintiff’s Statements Of Legal Conclusions Should Not Be Considered By**  
 5 **The Court**

6 Federal Rules of Evidence 701 and 702 prohibit the admission of statements of legal  
 7 opinion or legal conclusions. And, “[i]t is well settled that courts should disregard conclusions of  
 8 law (or ‘ultimate fact’) found in affidavits. . . .” *F.R.C. Int’l, Inc. v. United States*, 278 F.3d 641,  
 9 643 (6th Cir. 2002); *accord Howard v. Columbia Pub. Sch. Dist.*, 363 F.3d 797, 801 (8th Cir.  
 10 2004). *See also United States v. Hearst*, 563 F.2d 1331, 1351 (9th Cir. 1977) (holding that a  
 11 statement is an inadmissible legal opinion where it uses terminology, “the meaning of which is  
 12 not reasonably clear to laymen”); *see also Woods v. Lecureux*, 110 F.3d 1215, 1220 (6th Cir.  
 13 1997) (“a district court abuses its discretion when it allows a witness to define legal terms,  
 14 especially terms that carry a considerable amount of legal baggage”).

15 As noted in further detail in Defendant’s Specific Objections, Plaintiff’s declaration  
 16 purports to claim that Defendants do business in California. For instance, Defendant states that  
 17 “Defendant was doing business in the Northern District of California because it was my job to  
 18 contact its customers located in said District.” Yung Dec. ¶ 4. Stating that Defendant was “doing  
 19 business” in California such that California has personal jurisdiction over a defendant, is a legal  
 20 conclusion that only the courts can reach after consideration of specific facts relating to  
 21 defendant's connection with the forum state. *See e.g. Schwarzenegger v. Fred Martin Motor Co.*,  
 22 374 F.3d 797, 802 (9th Cir. 2004) (“showing that a defendant purposefully availed himself of the  
 23 privilege of doing business in a forum state typically consists of evidence of the defendant’s  
 24 actions in the forum, such as executing or performing a contract there”). Accordingly, these and  
 25 the other legal conclusions contained in Plaintiffs’ declarations must be disregarded. *See Hearst*,  
 26 563 F.2d at 1351.

### III. SPECIFIC OBJECTIONS TO EVIDENCE

MATERIAL OBJECTED TO	GROUNDS FOR OBJECTION
<p>1. <b>Yung Dec., ¶ 2:</b>            “The employment agreement, which is the subject matter of the instant litigation was signed by me in the Northern District of California.”</p>	<p>The statement is barred by the best evidence rule because it fails to attach the alleged employment agreement. <i>See</i> FRE 1001.</p> <p>The statement is also inadmissible because it improperly states a legal conclusion as to the “Northern District of California.” <i>See F.R.C. Int’l, Inc.</i>, 278 F.3d at 643; <i>Hearst</i>, 563 F.2d at 1351.</p>
<p>2. <b>Yung Dec., ¶ 3:</b>            “The work I was hired to do was to be performed in the Northern District of California.”</p>	<p>The statement is vague and conclusory in particular to the meaning of “the work I was hired to do” and “was to be performed.” <i>See National Steel Corp.</i>, 121 F.3d at 502.</p> <p>The statement is also overbroad and not grounded in factual matter. <i>See Far Out Prods.. v. Oskar</i>, 247 F.3d at 997.</p> <p>Further, the statement is inadmissible because it improperly states a legal conclusion that the work was performed in the Northern District of California for purposes of establishing personal jurisdiction over Defendants. <i>See F.R.C. Int’l, Inc.</i>, 278 F.3d at 643; <i>Hearst</i>, 563 F.2d at 1351.</p>
<p>3. <b>Yung Dec., ¶ 4:</b>            “Defendant was doing business in the Northern District of California because it was my job to contact its customers located in said District.”</p>	<p>The statement is vague and conclusory in particular to the meaning of “doing business” and that contacting customers means “doing business in the Northern District of California.” <i>See National Steel Corp.</i>, 121 F.3d at 502.</p> <p>The statement in its entirety is also overbroad and not grounded in factual matter because the declarant does not provide any facts supporting the assertion that Defendant “was doing business in the Northern District of California.” <i>See Far Out Prods.. v. Oskar</i>, 247 F.3d at 997.</p> <p>In addition, the statement lacks foundation because the declarant has failed to sufficiently establish that he has personal knowledge of Defendants’ “customers” locations. <i>See</i> FRE 602.</p>

1		Further, the statement is inadmissible because it improperly states a legal conclusion that “doing business” in the Northern District of California and having customers located in the Northern District of California means that California has personal jurisdiction over Defendants. <i>See F.R.C. Int’l, Inc.</i> , 278 F.3d at 643; <i>Hearst</i> , 563 F.2d at 1351.
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6	<b>4. Yung Dec., ¶ 4:</b>	The statement is vague and conclusory in particular to the meaning of “do business.” <i>See National Steel Corp.</i> , 121 F.3d at 502.
7	“Some of the Northern District customers	
8	Defendants do business within the District are	
9	Borland, Inxright, NEC, IBM, Microsoft and	The statement in its entirety is also overbroad and not grounded in factual matter. <i>See Far Out Prods.. v. Oskar</i> , 247 F.3d at 997.
10	Google, through their local offices in the	
11	Northern District.”	In addition, the statement also lacks foundation because the declarant has failed to sufficiently establish that he has personal knowledge of Defendants’ “customers” location and that Defendants’ actually “do business” with said customers. <i>See</i> FRE 602.
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15		Further, the statement is inadmissible because it improperly states a legal conclusion that since Defendants “do business” in the Northern District of California, and have customers’ whose local officers were in the Northern District of California, the Northern District of California has personal jurisdiction over Defendants. <i>See F.R.C. Int’l, Inc.</i> , 278 F.3d at 643; <i>Hearst</i> , 563 F.2d at 1351.
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21	<b>5. Yung Dec., ¶ 5:</b>	The statement is vague and conclusory in particular to the meaning of “business.” <i>See National Steel Corp.</i> , 121 F.3d at 502. The statement is also vague as to time.
22	“Throughout 2006, I traveled to the San	
23	Francisco Bay area for business.”	
24		The statement in its entirety is also overbroad and not grounded in factual matter because the declarant has not provided any facts as to what “business” required travel to the San Francisco Bay area and when exactly this travel took place. <i>See Far Out Prods.. v. Oskar</i> , 247 F.3d at 997.
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**6. Yung Dec., ¶ 5:**

“Even while I physically worked in the District of Columbia and State of Virginia, I actively engaged business affiliates in California on behalf of Defendants.”

The statement is vague and conclusory in particular to the meaning of “actively engaged,” “business affiliates,” and “on behalf of Defendants.” *See National Steel Corp.*, 121 F.3d at 502.

The statement is also overbroad and not grounded in factual matter as to the tasks he performed and for what business affiliates he performed them. *See Far Out Prods. v. Oskar*, 247 F.3d at 997.

**7. Yung Dec., ¶ 5:**

“In fact, as chief scientist, I was charged with establishing business relationships with Silicon Valley, home to many other high-tech partners.”

The statement is vague and conclusory in particular to the meaning of “chief scientist,” “charged with,” “establishing,” “business relationships,” and “other high-tech partners.” *See National Steel Corp.*, 121 F.3d at 502.

The statement in its entirety is also overbroad and not grounded in factual matter as to the tasks performed in “establishing business relationships” and the identity of the “other high-tech partners”. *See Far Out Prods. v. Oskar*, 247 F.3d at 997.

In addition, the statement also lacks foundation because the declarant has failed to sufficiently establish that he has personal knowledge of Defendants’ “high-tech partners.” *See* FRE 602.

**8. Yung Dec., ¶ 6:**

“I started work for Institutional Trading Corporation even while I was still living in San Francisco, CA.”

The statement is vague and conclusory in particular to the meaning of “started work.” *See National Steel Corp.*, 121 F.3d at 502.

The statement in its entirety is also overbroad and not grounded in factual matter as to what work he performed for Institutional Trading Corporation. *See Far Out Prods. v. Oskar*, 247 F.3d at 997.

The statement is also misleading because it contradicts statements declarant made at the time. *See* Declaration of Mark Cordover filed in support of Defendants’ Motion to Dismiss (“Cordover Dec.”) Exs. A, B.

In addition, in contradicts a factual finding



1		made by the California Labor Commissioner at the Division of Labor Standards Enforcement. <i>See id.</i> at Exs. J, K.
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3	<b>9. Yung Dec., ¶ 6:</b>	
4	“Between November 11, 2005 and December	The statement is vague and conclusory in particular as to the meaning of “actively
5	1, 2005, I was actively working for ITC but	working.” <i>See National Steel Corp.</i> , 121 F.3d
6	was not paid.”	at 502.
7		The statement in its entirety is also overbroad
8		and not grounded in factual matter because the
9		declarant has not provided any facts to establish
10		that he was “actively working for ITC”
11		between November 11, 2005 and December 1,
12		2005. <i>See Far Out Prods. v. Oskar</i> , 247 F.3d
13		at 997.
14		Further, the statement is inadmissible because it
15		improperly states a legal conclusion that
16		declarant was an employee of ITC from
17		November 11, 2005 and December 1, 2005
18		while living in San Francisco. <i>See F.R.C. Int’l,</i>
19		<i>Inc.</i> , 278 F.3d at 643; <i>Hearst</i> , 563 F.2d at 1351.
20		The statement is also misleading because it
21		contradicts statements declarant made at the
22		time. <i>See Cordover Dec. Exs. A, B.</i>
23		In addition, in contradicts a factual finding
24		made by the California Labor Commissioner at
25		the Division of Labor Standards Enforcement.
26		<i>See id.</i> at Exs. J, K.
27	<b>10. Yung Dec., ¶ 7:</b>	
28	“I worked via telephone and e-mail with many	The statement is vague and conclusory in
	business affiliates who were customers of	particular as to the meaning of “worked,”
	Defendant, in the San Francisco Bay Area,	“customers,” and “business affiliates.” <i>See</i>
	including Borland, NEC and Google.”	<i>National Steel Corp.</i> , 121 F.3d at 502.
		The statement in its entirety is also overbroad
		and not grounded in factual matter because the
		declarant has not provided any facts to establish
		exactly what work he did via telephone and e-
		mail, and the relationship between the
		“business affiliates” or “customers” and
		Defendants. <i>See Far Out Prods. v. Oskar</i> , 247
		F.3d at 997.
		Further, the statement is inadmissible because it

1		improperly states a legal conclusion that the declarant was “actively working” so as to be considered an employee of ITC while living in San Francisco. <i>See F.R.C. Int’l, Inc.</i> , 278 F.3d at 643; <i>Hearst</i> , 563 F.2d at 1351.
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5	11. <b>Yung Dec., ¶ 8:</b>	The statement is vague and conclusory in particular as to the meaning of “hired mainly,” “establish presence,” “business relations,” “customers,” and “Silicon Valley area.” <i>See National Steel Corp.</i> , 121 F.3d at 502.
6	“I was hired mainly to establish presence and business relations with customers in the Silicon Valley area.”	Further, the statement is inadmissible because it improperly states a legal conclusion as to Defendants’ presence in California for jurisdictional purposes. <i>See F.R.C. Int’l, Inc.</i> , 278 F.3d at 643; <i>Hearst</i> , 563 F.2d at 1351.
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11	12. <b>Yung Dec., ¶ 9:</b>	The statement is vague and conclusory in particular as to the meaning of “board” and “technical advisers.” <i>See National Steel Corp.</i> , 121 F.3d at 502.
12	“IT.com has on its board technical advisers from Stanford University, Borland, and Google.”	In addition, the statement also lacks foundation because the declarant has failed to sufficiently establish that he has personal knowledge of It.com’s “board” and its “technical advisers.” <i>See FRE 602.</i>
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18	13. <b>Yung Dec., ¶ 9:</b>	The statement is vague and conclusory in particular as to the meaning of “actively work for IT.com” and as to actually who these named individuals are and the nature of their relationship to IT.com. <i>See National Steel Corp.</i> , 121 F.3d at 502.
19	“Michael Klausner, Tod Nielsen, and Adam Bosworth all live in the San Francisco Bay area, actively work for IT.com, in the San Francisco Bay Area.”	The statement in its entirety is also overbroad and not grounded in factual matter because the declarant has not provided any facts to establish the nature of the named individuals’ relationships to IT.com. <i>See Far Out Prods.</i> , 247 F.3d at 997.
20		In addition, the statement also lacks foundation because the declarant has failed to sufficiently establish that he has personal knowledge of the individuals named, where they live, and their
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1		relationship to IT.com. <i>See</i> FRE 602.
2		Further, the statement is inadmissible because
3		Declarant's use of the term "actively work"
4		improperly states a legal conclusion to establish
5		Defendants' presence in California for
6		jurisdictional purposes. <i>See F.R.C. Int'l, Inc.</i> ,
7		278 F.3d at 643; <i>Hearst</i> , 563 F.2d at 1351.
8	14. <b>Yung Dec., ¶ 10:</b>	The statement is vague and conclusory in
9	"Mark Cordover and I have actively pursued	particular as to the meaning of
10	business with California companies in	"actively pursued," "business," "California
11	California, pursuant to his directions, for	companies," and "in California." <i>See National</i>
12	Defendant companies."	<i>Steel Corp.</i> , 121 F.3d at 502.
13		Further, the statement is inadmissible in its
14		entirety because it improperly states a legal
15		conclusion to establish Defendants' presence in
16		California for jurisdictional purposes. <i>See</i>
17		<i>F.R.C. Int'l, Inc.</i> , 278 F.3d at 643; <i>Hearst</i> , 563
18		F.2d at 1351.
19	15. <b>Yung Dec., ¶ 11:</b>	The statement is vague and conclusory in
20	"Mark Cordover and I have actively recruited	particular to the meaning of
21	prospective advisers and employees in	"actively recruited," and "prospective advisers"
22	California for Defendant companies."	and "in California." <i>See National Steel Corp.</i> ,
23		121 F.3d at 502.
24		The statement in its entirety is also overbroad
25		and not grounded in factual matter because the
26		declarant has not provided any facts to establish
27		that prospective advisers and employees were
28		actively recruited in California to work for
		Defendants. <i>See Far Out Prods.</i> , 247 F.3d at
		997.
		Further, the statement is inadmissible because
		Declarant's use of the terms "actively
		recruited" and "in California" improperly
		states a legal conclusion to establish
		Defendants' presence in California for
		jurisdictional purposes. <i>See F.R.C. Int'l, Inc.</i> ,
		278 F.3d at 643; <i>Hearst</i> , 563 F.2d at 1351.
	16. <b>Yung Dec., ¶ 12:</b>	The statement is vague, conclusory, and
	"Deductions were made from my paychecks for	incomprehensible in its entirety. <i>See National</i>
	California unemployment insurance because	<i>Steel Corp.</i> , 121 F.3d at 502.

1 Defendant companies were doing business in  
2 California.”

This statement is flatly contradicted by the California Unemployment Insurance Code. Employees do not pay into unemployment insurance. The unemployment insurance program is financed by employers who themselves pay unemployment taxes on wages paid to employees. *See* California Unemployment Ins. Code §§ 901-995.

The statement in its entirety is also overbroad and not grounded in factual matter because the declarant has not provided any facts to establish that said deductions from his paycheck were actually made and that “Defendant companies were doing business in California.” *See Far Out Prods.*, 247 F.3d at 997.

The statement is also misleading and contradicts the statement made by the declarant in paragraph 5 of his same declaration, that he “physically worked in the District of Columbia and State of Virginia” throughout 2006.

To the extent the statement purports to prove exactly what deductions were made from Declarant’s paycheck, it is barred by the best evidence rule because it fails to attach such documents. *See* FRE 1002.

In addition, the statement is inadmissible because Declarant’s use of the term “Defendant companies were doing business in California” improperly states a legal conclusion as to Defendants’ presence in California for jurisdictional purposes. *See F.R.C. Int’l, Inc.*, 278 F.3d at 643; *Hearst*, 563 F.2d at 1351.

Further, this statement is misleading because it directly contradicts documentary evidence provided by Defendant companies. *See* Cordover Dec. Ex. F.

In addition, in contradicts a factual finding made by the California Labor Commissioner at the Division of Labor Standards Enforcement. *See id.* at Exs. J, K.

17. **Yung Dec., ¶ 13:**

The statement is vague and conclusory in

1 “Defendant companies have a payroll  
2 consisting of other employees who are  
3 physically located in the Northern District and  
4 do business here on Defendant’s behalf.”

particular as to the meaning of the terms  
“payroll,” “physically located in the Northern  
District,” and “do business here on Defendant’s  
behalf.” *See National Steel Corp.*, 121 F.3d at  
502. The statement is also vague as to time.

The statement in its entirety is also overbroad  
and not grounded in factual matter. *See Far  
Out Prods.*, 247 F.3d at 997.

In addition, the statement also lacks foundation  
because the declarant has failed to sufficiently  
establish that he has personal knowledge of  
Defendants’ payroll, who is on Defendants’  
payroll, where those individuals are located,  
what they do on behalf of Defendants, and  
where they do it. *See* FRE 602.

To the extent the statement purports to prove  
the location of who is on Defendants’ payroll, it  
is barred by the best evidence rule because it  
fails to attach such documents. *See* FRE 1002.

In addition, the statement is inadmissible in its  
entirety because Declarant’s use of the term  
“do business here” improperly states a legal  
conclusion as to Defendants’ presence in  
California for jurisdictional purposes. *See  
F.R.C. Int’l, Inc.*, 278 F.3d at 643.

18. **Yung Dec., ¶ 14:**

19 “I paid California State income taxes in 2005  
20 and 2006 in income I earned in California  
21 while working for Defendants here which  
22 primarily consisted of expanding their business  
23 here and recruiting California residents to  
24 become their employees in this state.”

The statement is vague, conclusory and  
incomprehensible in its entirety. *See National  
Steel Corp.*, 121 F.3d at 502.

The statement in its entirety is also overbroad  
and not grounded in factual matter. *See Far  
Out Prods.*, 247 F.3d at 997.

The statement is also misleading and  
contradicts the statement made by the declarant  
in paragraph 5 of his same declaration, that he  
“physically worked in the District of Columbia  
and State of Virginia” throughout 2006.

In addition, the statement is inadmissible  
because it improperly states a legal conclusion  
as to Defendants’ presence in California for

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	<p>jurisdictional purposes. <i>See F.R.C. Int'l, Inc.</i>, 278 F.3d at 643; <i>Hearst</i>, 563 F.2d at 1351.</p> <p>To the extent the statement purports to prove exactly what income taxes Declarant made and the source and source location of said income, it is barred by the best evidence rule because it fails to attach such documents. <i>See</i> FRE 1002.</p> <p>Further, this statement is misleading because it directly contradicts documentary evidence provided by Defendant companies. <i>See</i> Cordover Dec. Exs E &amp; F.</p> <p>In addition, in contradicts a factual finding made by the California Labor Commissioner at the Division of Labor Standards Enforcement. <i>See id.</i> at Exs. J, K.</p>
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Dated: February 8, 2008

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/s/  
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Company" and IT.COM